

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

ARTHUR BALLINGER, IV

Plaintiff,

v.

CIVIL ACTION NO. 6:06-cv-01036

THOMAS MCBRIDE,

Defendant.

MEMORANDUM OPINION AND ORDER

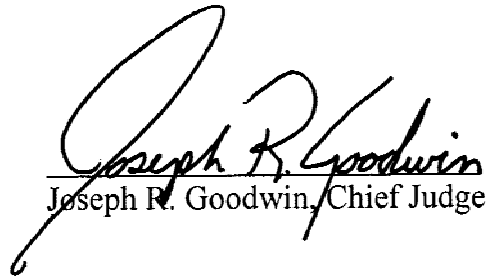
Pending before the court is the respondent's Motion for Summary Judgement and Motion to Dismiss [Docket 10]. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court dismiss the petition, without prejudice, for failure to exhaust state court remedies [Docket 17].

The petitioner has filed a letter-form "Appeal of Decision to Recommend Denial of Post-Conviction Habeas Corpus," which the court treats as objections to the Magistrate Judge's Proposed Findings and Recommendation. The objections in the petitioner's submission are without merit.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **ORDERS** that the petition be **DISMISSED**, without prejudice.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: August 9, 2007



Joseph R. Goodwin, Chief Judge